



DEPARTMENT OF VETERANS AFFAIRS
DEPUTY ASSISTANT SECRETARY FOR HUMAN RESOURCES MANAGEMENT
Washington DC 20420

March 17, 2004

HUMAN RESOURCES MANAGEMENT LETTER NO. 05-04-02

Interim Instructions Concerning Implementation of Section 301, "Modification of Certain Authorities on Appointment and Promotion of Personnel in the Veterans Health Administration," of Public Law 108-170, "Veterans Health Care, Capital Asset, and Business Improvement Act of 2003," December 6, 2003

1. Purpose. This Human Resources Management Letter (HRML) provides interim guidance and instructions for implementing provisions of the above legislation that must be effected immediately. Final guidance will be issued after the Department of Veterans Affairs has met its labor relations obligations.

2. Background. Section 301 of the above legislation modified authorities related to employment of a variety of Veterans Health Administration (VHA) employees. Some provisions of the Act were effective immediately, such as the conversion of employees to hybrid status; however, changes to the PAID system are required before personnel actions can be properly documented. In addition, changes specific to pay, promotions and advancement for employees in the newly converted occupations will be required to fully implement the Act. Because these changes will take time, some actions will require retroactive implementation, while others will be prospective but delayed. Paragraph 3 of this HRML describes interim measures that have been established to allow for recruitment and other necessary actions during the development of long-term policies and procedures.

3. Discussion. Changes made by specific sections of the Act are discussed below:

a. Section 301(a):

(1) New Hybrid Occupations. This paragraph converts the following occupations (collectively referred to as the "new hybrid occupations") from the competitive civil service to the hybrid title 38 personnel system effective December 6, 2003:

- (a) Audiologist;
- (b) Speech Pathologist;
- (c) Audiologist-Speech Pathologist;
- (d) Biomedical Engineer;
- (e) Dietitian;
- (f) Medical Instrument Technician;
- (g) Medical Records Administrator or Specialist;
- (h) Medical Records Technician;
- (i) Medical Technologist;

HUMAN RESOURCES MANAGEMENT LETTER NO. 05-04-02

- (j) Dental Technologist, which means Dental Hygienist and Dental Assistant/Aide;
- (k) Nuclear Medicine Technologist;
- (l) Occupational Therapy Assistant/Aide;
- (m) Kinesiotherapist, currently titled Corrective Therapist, GS-635;
- (n) Orthotist-Prosthetist;
- (o) Pharmacy Technician/Aide;
- (p) Physical Therapy Assistant/Aide;
- (q) Prosthetic Representative;
- (r) Psychologist;
- (s) Diagnostic Radiologic Technician/Technologist;
- (t) Therapeutic Radiologic Technician/Technologist; and
- (u) Social Worker.

NOTE (1): Employees in the above occupations are to be given a letter outlining the effects of conversion and a copy of that letter is to be filed on the left side of the employee's personnel folder. A sample letter is in Attachment A to this HRML. Until detailed policies and procedures related to conversion are completed, employees in these occupations are still to be treated as if they were appointed under title 5. This includes complying with applicable national and local collective bargaining agreements. Procedures for documenting the conversion on a "Notification of Personnel Action," Standard Form 50b, will also be issued at a later date.

NOTE (2): Any existing special salary rate previously approved in VA Central Office remains in effect for the above occupations. Effective immediately, facility Directors may establish or adjust special salary rates for these occupations locally using the procedures in VA Handbook 5007, Part VI, Chapter 6, paragraph 2.

(2) Pre-existing Hybrid Occupations. Some employees remained in the title 5 competitive service when their occupations were converted to the hybrid title 38 personnel system prior to December 6, 2003. However, all employees listed in section 301(a) of P.L. 108-170 converted to hybrid status on December 6, 2003 including employees who had not previously converted to hybrid status in the following occupations:

- (a) Certified or Registered Respiratory Therapist;
- (b) Licensed Physical Therapist
- (c) Licensed Practical or Vocational Nurse
- (d) Occupational Therapist; and
- (e) Pharmacist

NOTE: For those stations where paragraph (2) above applies, employees in the above occupations who had remained in title 5 competitive service appointments are to be given a letter outlining the effects of conversion, and a copy of that

HUMAN RESOURCES MANAGEMENT LETTER NO. 05-04-02

letter is to be filed on the left side of the employee's personnel folder. A sample letter is in Attachment A to this HRML. Until detailed conversion procedures are issued, these employees are to be treated as if they were appointed under title 5. This includes observing any national and local collective bargaining agreements. Detailed policies and procedures related to the conversion and procedures for documenting the conversion on a "Notification of Personnel Action," Standard Form 50b, will be issued at a later date. Part-time employees in the above occupations who were already covered by hybrid status prior to December 6, 2003 became eligible for some additional rights as a result of P.L. 108-170. A sample letter to employees who were converted to hybrid status prior to December 6, 2003 is in Attachment B to this HRML.

(3) New Appointments in the New Hybrid Occupations. Paragraphs 301(a) and 301(c) of P.L. 108-170 authorize the appointment of individuals under the hybrid title 38 personnel system. Effective immediately, individuals in the new hybrid occupations are to be appointed using the authorities in 38 U.S.C. 7401(3) (for full-time permanent employees) or 38 U.S.C. 7405(a)(1)(B) (for employees appointed on a part-time, temporary, or intermittent basis). Existing title 38 procedures relating to hybrid recruitment, referral, veterans preference, and appointment should be used to make initial appointments, except that:

- (a) Position descriptions classified under the title 5 classification system will be used to determine grade levels.
- (b) Existing title 5 qualification standards will be used.
- (c) The step within the grade will be set using existing title 5 procedures.
- (d) Professional Standards Boards (PSBs) will not be established to review appointments during this interim period. Until PSBs are established at a later date, the selecting official and servicing HR Office representative will review and recommend approval of appointments.

NOTE: *New appointees in the new hybrid occupations are to be given a letter outlining the changes resulting from the implementation of P.L. 108-170, and a copy of that letter is to be filed on the left side of the employee's personnel folder. A sample letter is in Attachment C to this HRML. Until detailed policies and procedures are issued, these employees are to be treated as if they had been appointed under title 5. This includes observing any national and local collective bargaining agreements. Interim PAID procedures related to implementing the appointment are in Attachment D.*

(4) Promotions in the New Hybrid Occupations. Until the Secretary issues permanent promotion policies, incumbents of the new hybrid occupations may be promoted up to the full performance level of the position in accordance with the existing title 5 career ladder promotion process. Promotions above the full performance level are subject to title 5 Merit Promotion procedures.

HUMAN RESOURCES MANAGEMENT LETTER NO. 05-04-02

b. Section 301(b). This paragraph amends section 7403 of title 38, United States Code, to provide that:

(1) Effective December 6, 2003, the following actions that affect employees in hybrid title 38 occupations, including employees in occupations listed in paragraphs 3a(1) and 3a(2) above, shall be resolved as if the employee had been appointed under title 5:

- (a) Disciplinary and adverse actions;
- (b) Reductions-in-force;
- (c) Rights of part-time employees; and
- (d) Grievance procedures (including similar actions and procedures involving employees in a probationary status);

NOTE: The effect of this change is outlined in the letters given to employees. See Attachments A, B, and C. Until detailed policies and procedures have been issued, all of the above actions are to be treated as if the employee were appointed under title 5. This includes observing national and local labor agreements.

(2) If the Secretary of Veterans Affairs establishes advancement and promotion procedures for hybrid title 38 occupations, such systems shall be planned, developed, and implemented in collaboration with, and with the participation of, the exclusive representatives of such employees. VA Central Office will be collaborating with unions regarding advancement and promotion procedures for hybrid title 38 occupations. Until the collaboration process has been completed and new guidelines are issued, facilities should continue to apply existing title 5 advancement and promotion procedures. This includes abiding by any national and local collective bargaining agreements.

c. Section 301(c). This paragraph amends section 7405 of title 38, United States Code, effective December 6, 2003, to authorize the appointment of hybrid title 38 employees in both the pre-existing and new hybrid occupations on a temporary full-time, part-time, without compensation, or fee basis.

d. Section 301(d). This paragraph provides that in accordance with regulations issued by the Secretary of Veterans Affairs, employees in all hybrid title 38 occupations may be paid premium pay on the same basis as registered nurses. This means that employees in both the pre-existing and new hybrid occupations (a) may be paid title 38 premium pay for nights, holidays, and overtime, and (b) must be paid title 38 premium pay for weekends.

e. Section 303(a). This section provides that VHA health care employees will be entitled to additional pay (premium pay) for weekend work effective January 11, 2004.

HUMAN RESOURCES MANAGEMENT LETTER NO. 05-04-02

NOTE: Employees in the new hybrid title 38 occupations became entitled to weekend pay effective December 6, 2003, under section 301(d). Other VHA health care employees became entitled to weekend pay effective January 11, 2004, under section 303(a). Procedures concerning payment of weekend pay will be issued separately.

4. Interim Policy Approval. These interim guidance and instructions are being issued in accordance with the Assistant Secretary for Management (OHR&A – 006) memorandum dated March 17, 2004.

5. Interpretive Guidance. This HRML provides interpretive guidance related to the memorandum cited in paragraph 4 above. The memorandum and this HRML have been concurred in by the Under Secretary for Health and General Counsel.

6. Further Questions. Inclusion of the new hybrid occupations in the title 38 personnel system provides VA with important new recruitment and retention opportunities. However, a number of policy issues must be addressed prior to full implementation of the new law. Attachment E is a discussion of question and answers addressing common actions expected to occur with the conversion of occupations to hybrid title 38. The Office of Human Resources Management will be communicating with local facilities through a number of special-issue conference calls, and will be developing training and other materials necessary to support implementation. Questions concerning this issue should be directed to the facility Human Resources Management Officer. Human Resources Management Officers may direct their questions to Carol Mellen at (202) 273-9827.



T. J. Hogan

Attachments A - E

**SAMPLE LETTER FOR CURRENT VA EMPLOYEES IN NEW HYBRID
OCCUPATIONS**

(Audiologist, Speech Pathologist, Audiologist-Speech Pathologist, Biomedical Engineer, Dietitian, Medical Instrument Technician, Medical Records Administrator or Specialist, Medical Records Technician, Medical Technologist, Dental Hygienist, Dental Assistant/Aide, Nuclear Medicine Technologist, Occupational Therapy Assistant/Aide, Kinesiotherapist (Corrective Therapist), Orthotist-Prosthetist, Pharmacy Technician/Aide, Physical Therapy Assistant/Aide, Prosthetic Representative, Psychologist, Diagnostic Radiologic Technician/Technologist, Therapeutic Radiologic Technician/Technologist, and Social Worker)

**THIS SAMPLE LETTER MAY ALSO BE USED FOR VA EMPLOYEES IN
OCCUPATIONS THAT WERE ELIGIBLE FOR HYBRID TITLE 38 STATUS PRIOR
TO DECEMBER 6, 2003, BUT WHO DID NOT CONVERT TO HYBRID STATUS
PRIOR TO THAT DATE.**

On December 6, 2003, the President signed the "Veterans Health Care, Capital Asset, and Business Improvement Act" (Public Law No. 108-170). It converted 22 health care occupations from the competitive civil service to the hybrid title 38 employment system, and converted to hybrid title 38 status VA employees currently serving on title 5 appointments in occupations that were eligible for conversion to hybrid title 38 prior to December 6, 2003. Certain title 38 and hybrid appointment, promotion, and weekend premium pay authorities in the Veterans Health Administration were also modified. You are affected by the following changes:

Full-Time and Part-Time Employees Appointed Without Time Limitation

Pay. The change to hybrid status does not affect your current grade, step or salary rate. In addition to your basic pay, you are now entitled to title 38 premium pay at the rate of 25 percent of your basic hourly rate of pay for each hour of service on a tour of duty, any part of which is between midnight Friday and midnight Sunday. This weekend premium pay entitlement was effective December 6, 2003. You began receiving additional pay for all Saturday hours worked after January 11, 2004 on the normal pay date. However, additional changes must be made to the payroll system for Saturday hours worked between December 6, 2003 and January 11, 2004 and the changes in the pay entitlement for all Sunday hours worked since December 6, 2003. You will receive this pay retroactively once the system changes are accomplished.

Staffing. You are now covered by the hybrid title 38 employment system. New policies related to advancements and promotions are being developed. Until these policies are finalized, only title 38 hybrid appointment procedures will be used. During this interim period current employees in the new hybrid occupations and employees appointed using interim procedures will continue to be covered by title 5 procedures for position classification, qualification determination, promotions, and advancements.

HUMAN RESOURCES MANAGEMENT LETTER 05-04-02

ATTACHMENT A

Adverse Action Rights. You remain covered by the same applicable agency and negotiated disciplinary and adverse action procedures and grievance procedures as prior to the conversion. The only change for you is the point at which you accrue the right to appeal an adverse action to the Merit Systems Protection Board (MSPB). The MSPB considers hybrid appointments as excepted service. As such, you are entitled to appeal an adverse action to the MSPB once you have completed a minimum amount of continuous, non-temporary Federal service in the same line of work. For “veterans preference eligible” employees, the requirement is one year of service. For “other than preference eligible” employees, the requirement is two years of service. Questions regarding whether you are a veterans preference eligible should be referred to your local Human Resources Office. It should be noted, however, that non-preference eligible employees who have completed between one and two years of continuous service are entitled to VA adverse action procedures and you may grieve an adverse action through the applicable grievance procedure.

Reduction-in-Force Rights. Full-time and part-time employees appointed without time limitation retain the same RIF rights under the hybrid title 38 system as they had under title 5, but will only compete with other employees in the hybrid system.

Intermittent Employees Appointed Without Time Limitation

All of the information described above for full-time and part-time employees appointed without time limitation applies to employees on intermittent work schedules, except that the manner in which your service is credited towards completion of your probationary period and service required to appeal an adverse action to MSPB are different. One year of service is equal to 260 intermittent, actual days worked; two years of service are equal to 520 intermittent, actual days worked.

Employees Appointed on a Time-Limited Basis

All of the information on Staffing and Pay described above for employees appointed without time limitation applies to temporary employees on the same type of work schedule, that is, full time, part time, or intermittent.

Adverse Action Rights. There is no change in adverse action rights for temporary employees. Temporary employees, whether previously appointed to a hybrid position or converted as a result of the new legislation, are not affected by the new legislation in regard to adverse action procedures or grievance or appeal rights. As a temporary employee, you are covered under agency procedures in regards to disciplinary actions and may file a grievance, unless specifically excluded. However, temporary employees may be terminated without regard to adverse action procedures and do not have the right to grieve the termination or file an appeal with the MSPB. An exception are temporary employees in a bargaining unit who may have contractual adverse action and grievance rights.

RIF Rights. The status of temporary employees during a reduction-in-force was not changed by this legislation. Temporary employees with appointments of one year or less do not compete in a

HUMAN RESOURCES MANAGEMENT LETTER NO. 05-04-02
Attachment A

RIF and may be separated without regard to RIF procedures and do not have the right to grieve the separation or file an appeal with the MSPB. Temporary employees with appointments of more than one year compete in RIFs and have appeal rights to MSPB.

**SAMPLE LETTER FOR EMPLOYEES ALREADY COVERED BY HYBRID
STATUS PRIOR TO DECEMBER 6, 2003**

On December 6, 2003, the President signed the "Veterans Health Care, Capital Asset, and Business Improvement Act" (Public Law No. 108-170). This legislation modifies certain title 38 and hybrid appointment, promotion, and Saturday premium pay authorities in the Veterans Health Administration. As an employee in one of the hybrid occupations, you may be affected by the following changes:

Full Time Employees Appointed Without Time Limitation

Staffing. There are no changes to the appointment, advancement, and promotion procedures at this time. The public law requires that VA collaborate with its unions on advancement and promotion systems for title 38 hybrid occupations, and this covers systems for both the existing hybrid occupations and the new hybrid occupations. If that collaboration process results in changes to the advancement and promotions systems for your occupation, you will receive additional information.

Pay. There is no change in pay entitlements for existing hybrids.

Adverse Action Rights. There are no changes with regard to your coverage under disciplinary and adverse action procedures or applicable grievance and appeal rights. Once you have completed your probationary period, you are entitled to VA's title 5 adverse actions procedures and you may file a grievance regarding the adverse action under the VA or negotiated grievance procedure. You attain the additional right to appeal an adverse action to the Merit Systems Protection Board once you have completed a minimum amount of continuous, non-temporary Federal service in the same line of work. For "veterans preference eligible" employees the requirement is one year of service. For "other than preference eligible" employees the requirement is two years of service. Again, this is not a change from previous rights and entitlements. Questions regarding whether you are a preference eligible should be referred to your local human resources office.

Reduction-in-Force (RIF) Rights. There are no changes to your RIF rights as a result of this law.

Part-Time Employees Appointed Without Time Limitation

Staffing. There are no changes to the appointment, advancement, and promotion procedures at this time. The public law requires that VA collaborate with its unions on advancement and promotion systems for title 38 hybrid occupations, and this covers systems for both the existing hybrid occupations and the new hybrid occupations. If that collaboration process results in changes to the advancement and promotions systems for your occupation, you will receive additional information.

HUMAN RESOURCES MANAGEMENT LETTER NO. 05-04-02
ATTACHMENT B

Pay. There is no change in pay entitlements for existing hybrids.

Adverse Action Rights. As a part-time employee appointed without time limitation you are now covered under applicable title 5 provisions for disciplinary and adverse action procedures, grievance procedures and appeal rights the same as full-time permanent hybrid employees. However, just like full-time hybrid employees, you are required to serve a probationary period. Once you have completed your probationary period, you are entitled to VA's title 5 adverse actions procedures and you may file a grievance regarding the adverse action under the VA or negotiated grievance procedure. You attain the additional right to appeal an adverse action to the Merit Systems Protection Board (MSPB) once you have completed a minimum amount of qualifying Federal service. The amount of qualifying service depends on whether you are considered a "preference" eligible employee. For "preference eligible" employees the requirement is one year of non-temporary continuous service in the same line of work. For non-preference eligible employees the requirement is two years of the same kind of service. Questions regarding whether you are a preference eligible should be referred to your local human resources office.

Reduction in Force (RIF) Rights. Part-time employees appointed without time limitation are now covered by RIF procedures and their rights are the same as part-time permanent employees appointed under title 5. This includes placement on a retention register and competition with other title 38 hybrid part-time permanent employees for retention. It also includes appeal rights to MSPB.

Intermittent Employees Appointed Without Time Limitation

All of the information described above for part-time employees appointed without time limitation applies to permanent employees on intermittent work schedules, except the manner in which your service is credited towards completion of your probationary period or service required to appeal an adverse action to MSPB is different. One year of service is equal to 260 intermittent, actual days worked; two years of service are equal to 520 intermittent, actual days worked.

Employees Appointed on a Time-Limited Basis

All of the information on Staffing and Pay described above for permanent employees also applies to temporary employees on the same types of work schedules.

Adverse Action Rights. Temporary employees, whether previously appointed to a hybrid position or converted as a result of the new legislation, are not affected by the new legislation in regard to adverse action procedures or grievance or appeal rights. As a temporary employee, you are covered under VA procedures in regards to disciplinary actions and may file a grievance, unless specifically excluded. However, temporary employees may be terminated without regard to adverse action procedures and do not have the right to grieve the termination or file an appeal with the MSPB. An exception is

HUMAN RESOURCES MANAGEMENT LETTER NO. 05-04-02
ATTACHMENT B

the temporary employee who is in a bargaining unit and may have contractual adverse action and grievance rights.

RIF Rights. The status of temporary employees during a reduction-in-force was not changed by this legislation. Temporary employees do not compete in a RIF and may be separated without regard to RIF procedures and do not have the right to grieve the separation or file an appeal with the MSPB. Temporary employees with appointments of more than one year compete in RIFs and have appeal rights to MSPB

**SAMPLE LETTER FOR EMPLOYEES APPOINTED TO NEW HYBRID
OCCUPATIONS**

Information Notice Concerning Your Appointment with VA

On December 6, 2003, the President signed the "Health Care, Capital Asset, and Business Improvement Act of 2003." This law transferred many Department of Veterans Affairs (VA) health care occupations from the competitive civil service employment system (which applies to most Federal employees) to an excepted service employment system unique to VA. This means VA is developing new policies and procedures affecting qualification requirements, appointments, promotions, and advancement for employees in your occupation.

Your appointment, advancement, pay, and other benefits will not be adversely affected by these changes. However, until new policies are issued, interim procedures for your position have been developed and will remain in place during this transition period. These interim procedures are similar to the procedures that existed prior to December 6, 2003.

We will do our best to keep you informed of all changes related to your appointment as they occur. In the meantime, if you have any questions about this notice or your appointment please feel free to contact a member of the human resources staff.

HUMAN RESOURCES MANAGEMENT LETTER 05-04-02

Attachment D

Attention: HRM Processing and Records Personnel
From: VACO Workforce Information Systems Team (054C2)
Date: /04

Subject: WIST Bulletin 04-XX – New Hybrid Appointment under PL 108-170

BRING TO THE IMMEDIATE ATTENTION OF HR OFFICER

References: PL 108-170 dated 12/6/03
VA Handbook 5001
VA Handbook 5003
VA Handbook 5005
VA Handbook 5007
VA Handbook 5013
VA Handbook 5017
VA Handbook 5021
HRML 05-04-02

Background: Recent legislative changes have added additional positions to Excepted service using “hybrid” appointment authorities under 38 USC 7401 and 38 USC 7405. WIST has developed the following interim procedures for appointments to these positions

A WIST bulletin with updates to the PAID coding manual procedures will be issued as soon as the PAID system changes have been completed. At that time information regarding conversion actions for the current employees in these new occupations will also be communicated.

Occupation Series and Title Codes

These occupations series and titles are those that are to be used for new appointments:

PSYCHOLOGIST

018002	PSYCHOLOGIST
018003	CLINICAL PSYCHOLOGIST
018004	RESEARCH PSYCH (CLINICL INVEST)
018005	CLINICL RESRCH PSYCHOLGST
018007	COUNSELING PSYCHOLOGIST
018011	DEP DIR MEN HTH/BEHAV SC
018025	RESEARCH PSYCH (RES ASSOC)
018026	RESEARCH PSYCHOLOGIST
018085	PSYCHOLOGIST
018086	PSYCHOLOGIST
018087	PSYCHOLOGIST
018092	PSYCHOL (ASSOC INVESTIGR)
018095	CLIN PSYCHOLOGIST (CONSLT)
018096	COUNSELING PSY (COUNSELING)

HUMAN RESOURCES MANAGEMENT LETTER 05-04-02

Attachment D

018097 PSYCHOLOGIST (CONSULT)
018098 PSYCHOLOGIST (RES ASSOC)

SOCIAL WORKER

018502 DIR, SOCIAL WORK SERVICE
018503 RESEARCH SOCIAL WORKER
018504 SOCIAL WORKER
018505 SOCIAL WORK PROG SPEC
018551 SOCIAL WORKER (CONSULTANT)
018557 SOCIAL WORKER
018558 SOCIAL WORKER
018559 SOCIAL WORKER
018561 SOCIAL WORK PRE-DOC FELW
018562 SOCIAL WORK MASTERS
018563 SOCIAL WK POST-MAST FELW
018571 SOCIAL WORKER

NUCLEAR MEDICINE

060113 NUCLEAR MED TECHNOLOGIST

DIETITIAN

063018 DIETITIAN
063020 DIETITIAN
063059 DIETETIC INT (COOR MSTRS)
063061 DIETITIAN

CORRECTIVE THERAPIST

063502 CORRECTIVE THERAPIST (TL)

THERAPY ASSISTANTS

063615 OCCUP THERAPY ASSISTANT
063616 PHYS THERAPY ASST (CLIN)
063617 OCCUP THERAPY ASST (CLIN)
063618 PHYSICAL THERAPY ASST

MEDICAL TECHNOLOGIST

064402 MEDICAL TECHNOLOGIST
064403 MEDICAL TECHNOLOGIST
064405 MEDICAL TECHNOLOGIST

DIAGNOSTIC RADIOLOGIC

064711 DIAGNOSTIC RADIOLOGIC TECHNICIAN
064712 DIAGNOSTIC RADIOLOGIC TECHNOLOGIST
064713 DIAG RAD TECHNICIAN (SPEC PROC)
064714 DIAG RAD TECHNOLOGIST (SPEC PROC)
064715 DIAG RAD TECH (ANGIOGRAPHY)
064716 DIAG RAD TECH (COMPT TOM)
064717 DIAG RAD TECH (MRI)

THERAPEUTIC RADIOLOGIC

064814 THERAPEUTIC RADIOLOGIC TECHNICIAN
064815 THERAPEUTIC RADIOLOGIC TECHNOLOGIST
064816 THER RAD TECH (DOSIMETRIST)
064817 THER RAD TECHNOLOGIST (DOSIMETRIST)

MEDICAL INSTRUMENT TECHNICIAN

064915 MED INST TECH (CARDIAC CA)
064916 MED INST TECH (EKG)
064917 MED INST TECH (EEG)
064918 MED INST TECH (PERFUSION)
064919 MED INST TECH (HEMODIAL)
064921 MED INST TECH (PULM FUNCTION)
064922 MED INST TECH (DIAG ULTRA)
064923 MED INST TECH (ECHOCARDIO)
064924 MEDICAL INSTRUMENT TECH (MRI)
064925 MEDICAL INSTRUMENT TECH
064927 MED INST TECH (VASCULAR)
064928 MED INST TECH (SLEEP TECH)

PHARMACY AID/TECHNICIAN

066103 PHARMACY TECHNICIAN (TYP)
066104 PHARMACY AID
066106 PHARMACY TECHNICIAN
066107 PHARMACY AID
066108 PHARMACY AID (OA)
066109 PHARMACY TECHNICIAN (OA)

AUDIOLOGIST/SPEECH

066502 AUDIOLOGIST
066505 AUDIOL(SPEECH PATHOLOGIST)
066508 RESEARCH AUDIOLOGIST
066512 RESRCH AUD (SPCH PATHLGST)
066515 RESEARCH SPEECH PATHOLOGIST

HUMAN RESOURCES MANAGEMENT LETTER 05-04-02

Attachment D

066518 SPEECH PATHOLOGIST
066565 AUDIO/SP-LANG PATH FW CFY
066568 AUDIOLOGIST-SPEECH PATH
066575 AUDIOL-SPEECH PATHOLOGIST
066582 DIR, AUDIO & SP PATH SVC

ORTHOTIST

066702 ORTHOTIST
066712 ORTHOTIST-PROSTHETIST
066722 PROSTHETIST

MEDICAL RECORDS ADMINISTRATION

066903 MEDICAL RECORDS ADMIN
066904 MED RECORDS ADMIN SPEC
066905 MED REC ADMIN TRNE (MAS)

PROSTHETIC

067205 PROSTHETIC REPRESENTATIVE
067206 PROSTH REP (ORTHO-PROSTH)

MEDICAL RECORDS TECHNICIAN

067501 MEDICAL RECORDS TECH
067502 MEDICAL RECORDS TECH
067504 MEDICAL RECORDS TECH(TYP)
067505 MED RECORDS TECH (TYP)
067506 MEDICAL RECORDS TECH (OA)
067508 MEDICAL RECORDS TECH (OA)
067509 MED RECORDS TCH (STENO/OA)

DENTAL ASSISTANT

068103 DENTAL AID
068104 DENTAL AID (TYPING)
068105 DENTAL ASSISTANT (OA)
068106 DENTAL ASSISTANT
068107 DENTAL ASSISTANT (STENOGRAPHY)
068109 DENTAL ASSISTANT (TYPING)
068142 DENTAL ASSISTANT (X-RAY)
068145 DENTAL ASSISTANT (X-RAY/ /STENO)
068148 DENTAL ASSISTANT (X-RAY/ /TYPING)

DENTAL HYGIENIST

068202 DENTAL HYGIENIST

BIOMEDICAL ENGINEER

085802 CLINICAL ENGINEER
085803 BIOMEDICAL ENGINEER
085804 RESEARCH BIOMEDICAL ENGR

Actions:

Do not convert any employee who is currently under a Career or Career Conditional appointment and is in any of the new positions identified below.

For FT, Part-time and Intermittent Permanent Appointments:

NOA : 170 - Excepted Appointment
Position No. enter appropriate number
Type App't: D
Occupation: Code Series, Title and Assignment (if applicable)
Legal Auth: ZLM - PL 108-170 dated 12/6/2003
Remarks: As applicable
Follow-up: Code 20 for probationary period
Do not code 03 F/U
SF-50 Prep Code: 1

Do not convert any employee who is currently under a Career or Career Conditional appointment and is in any of the new positions identified below.

For Conversions (use only as outlined in VA Handbook 5005):

NOA: 570 - Conversion to Excepted Appointment
Position No. enter appropriate number
Type App't: D
Occupation: Code Series, Title Code and Assignment (if applicable)
Legal Auth: ZLM - PL 108-170 dated 12/6/2003
Remarks: As applicable
Follow-up: Code 20 for probationary period
Do not code 03 F/U
SF-50 Prep Code: 1

For FT and Part-time Temporary Appointments:

NOA : 171 - Excepted Appointment NTE
Position No. enter appropriate number
Type App't: 8
Occupation: Code Series, Title and Assignment (if applicable)
Legal Auth: ZLM - PL 108-170 dated 12/6/2003
Follow-up: Code 05
SF-50 Prep Code: 1

HUMAN RESOURCES MANAGEMENT LETTER 05-04-02
Attachment D

For Conversions **NOT** from Career or Career Conditional Appointments (use only as outlined in VA Handbook 5005):

NOA: 571 - Conversion to Excepted Appointment NTE
Position No. enter appropriate number
Type App't: 8

HUMAN RESOURCES MANAGEMENT LETTER 05-04-02

Attachment D

Occupation: Code Series, Title Code and Assignment (if applicable)
Legal Auth: ZLM - PL 108-170 dated 12/6/2003
Follow-up: Code 05
SF-50 Prep Code: 1

Licensure follow up code may be used if applicable, however follow up codes 21 (date of grade) and 22 (date of entry into Title 38 position) can not be used at this time. Station follow-up codes may be used to track this information until PAID changes are completed.

Workforce Information Systems Team
202-273-9806
<http://vaww.va.gov/wist/hrmpaid.htm>
End of message

INTERIM INSTRUCTIONS: QUESTIONS AND ANSWERS

1. Staffing:

New Full-Time Permanent Appointments. These first questions and answers (a through l) apply to recruitment and selection of individuals for new full-time, permanent appointments under 38 USC 7401(3). Except where noted, references may be found in the VA Staffing Handbook 5005, Part II, Chapter 3.

a. Is there anything that should be done differently to recruit now that we will be hiring applicants without regard to civil service certificate processes?

Answer. You should continue to use recruitment sources comparable to those that you previously used. However, examining units won't be publishing your vacancies; for that reason you should post jobs in USAJobs or use other aggressive recruitment methods.

b. What if we have a certificate of eligibles from a title 5 announcement that we haven't acted on yet?

Answer. If you are currently in receipt of a certificate of eligibles from OPM or a DEU for any of the new hybrid occupations, you should return the certificate. You may copy the applications and consider them for your vacant position under the title 38 hybrid procedures, including the application of hybrid veterans' preference rules. Use 7401(3) as the appointment authority.

c. What forms do we require for new applications?

Answer. Before appointment, candidates must complete an Application for Associated Health Occupations (VAF 10-2850c) and a Declaration for Federal Employment (OF 306). See Section B, Paragraph 2a.

d. Can we appoint non-citizen applicants?

Answer. Applicants must be citizens of the U.S. except when it is not possible to recruit qualified U.S. citizens. See Sec. A, Para. 3g.

e. Are there any requirements to verify credentials necessary for appointment?

Answer. Yes, relevant credentials must be verified from the primary source. Independent practitioners will also be required to request clinical privileges, as they are currently required to do under title 5. Information obtained during reference checks and the credential verification process will be documented. See Sec. B, Para. 1g, 3, 6, 7 & 16 and Para. 1f and 2b.

f. Have approval levels for these new appointments changed?

Answer. The facility Director is the approval authority and may delegate this authority to the Chief of Staff or appropriate Associate Director. The HRM Officer remains the appointing officer. See Sec. A, Para. 2a and 2b(4).

g. How will veterans' preference be applied?

Answer. When candidates for these occupations are approximately equally qualified, preference will be given to preference eligibles. VA policy requires that selections be made in the following order (Sec. A, Para. 3a):

- disabled veterans who have a service-connected disability of 10% or more
- other preference eligibles (uncompensated disabled veterans, derived preference eligibles)
- veterans who served on active duty in wartime or during other designated service periods
- all other candidates

h. What do we do about physical requirements?

Answer. Follow current practice as explained in VA Handbook 5005, Part II, Chapter 3, Sec. A, Para. 3k and VA Handbook 5019, Parts II and III.

i. What about Professional Standards Boards?

Answer. Professional Standards Boards will not be used for the new hybrid occupations until the Secretary issues formal policy for their establishment and function.

j. What qualification standards will be applied?

Answer. Until the Secretary approves title 38 qualification standards for the new hybrid occupations, qualification determinations will be made by the HR Office in accordance with the applicable VA-specific qualification standards (if any) listed in VA Handbook 5005, Part II, Appendix II-F. Where VA-specific qualification standards do not exist, qualification determinations must be made in accordance with the appropriate OPM title 5 qualification standards.

k. How will pay be set on initial appointment?

Answer. Individuals appointed to the new hybrid occupations can be appointed at the minimum step of the grade using the appropriate salary chart. Individuals may also be appointed above the minimum step of the grade. Appointments above the minimum may be based on a candidate's existing pay, special VA needs, or conclusive evidence of superior qualifications, as determined and verified by the HR

Manager and the Service Chief/Product Line Manager. (Section E. Para. 2. and VA Handbook 5007, Part II, Chap. 3, Para. 3b.)

l. What records need to be kept regarding appointments?

Answer. Maintain sufficient records that clearly document the selection and related procedures used.

Promotions and Other Internal Actions Affecting Employees in the New Hybrid Occupations

m. What procedures do we apply for promotions and advancements for incumbents of the new hybrid occupations?

Answer. During this interim period, meaning until the Secretary issues applicable promotion and advancement procedures, incumbents of the new hybrid occupations will be promoted in accordance with the existing title 5 career ladder promotion process up to the full performance level of the position. To promote an incumbent in a new hybrid occupation beyond the full performance level of the position, use title 5 merit promotion procedures.

Temporary Full-time, Part-time and Intermittent Appointments Under 38 USC 7405(a)(1)(B)

n. Who may receive temporary appointments?

Answer. Temporary full-time appointments may be given to individuals in any of the new hybrid occupations when the work to be performed can be completed within a 3-year or shorter period, to re-employ an annuitant, to employ non-citizens when it is not possible to recruit qualified citizens, or to appoint candidates pending the processing of permanent full-time appointments. Part-time and intermittent appointments may be made to alleviate recruitment difficulties or when full-time appointments are not practical. See VA Handbook 5005, Part II, Chapter 3, Section G, Paragraphs 1a and 2a.

o. What is the duration of temporary appointments?

Answer. A temporary full-time appointment may be made for any period up to three years. Such appointments may be renewed but generally may not exceed 6 years in the aggregate. Part-time and intermittent appointments may be made with or without a time limit. (5005, Part II, Chap. 3, Sec. G, Para. 1b and 2b)

p. How are temporary appointments processed?

Answer. Temporary full-time, part-time, and intermittent appointments will be made following the same procedures and requirements as permanent full-time appointments. See VA Handbook 5005, Part II, Chap. 3, Sec. G, Para. 1d and 2c.

Advancements. For other issues related to advancements, refer to the sections on compensation and employee relations and special advancements

2. Compensation:

a. How does the change from the title 5 system to hybrid title 38 system affect the pay of employees in the covered occupations?

Answer. This change does not affect basic pay; employees will continue at the same grade, step and salary. They will retain all current pay entitlements.

b. How does this legislation affect current special salary rates?

Answer. Any existing special salary rate previously approved in VA Central Office remains in effect for the above occupations. Effective immediately, facility Directors may establish or adjust special salary rates for these occupations locally using the procedures in VA Handbook 5007, Part VI, Chapter 6, paragraph 2.

c. Are there any additional pay flexibilities or authorities applicable to hybrids?

Answer. Yes. Employees in the new hybrid title 38 occupations became entitled to weekend pay effective December 6, 2003. Full-time, part-time and intermittent hybrid employees who perform service on a **tour of duty**, any part of which is between midnight Friday and midnight Sunday, will receive premium pay (equal to 25 percent of their basic hourly rate of pay) for each hour of service on such tour.

Also, when necessary to maintain adequate staffing, facility Directors may authorize payment of premium pay for nights, holidays, and overtime on the same basis as registered nurses. If premium pay on the same basis as registered nurses is authorized, facility Directors may further adjust individual components of premium pay. For example, a facility Director may increase the night-time tour differential from 10 percent to 15 percent, or could adjust weekend premium pay for medical technologists from 25 to 27 percent and for occupational therapists to 28 percent, etc. Such an adjustment must be based on recruitment and retention problems that are being caused by higher rates of premium pay in the local community. Procedures for authorizing premium pay on the same basis as registered nurses are contained VA Handbook 5006, Part V, Chapter 3.

Until such time as PAID system changes related to the hybrid conversion are completed, payment of premium pay to employees in the new hybrid occupations on the same basis as registered nurses will require manual processing by the local Payroll office. Manual processing will require advance approval by the Fiscal Officer.

d. How does weekend pay differ from the Sunday pay employees already receive under title 5?

Answer. Under title 5, **full-time** employees are entitled to Sunday pay at the rate of 25 percent of their basic hourly rate of pay for each hour of a **regularly scheduled non-overtime** Sunday tour of duty.

Hybrid title 38 employees will now receive weekend pay under title 38. Under title 38, **full-time, part-time and intermittent** employees are entitled to weekend pay at the rate of 25 percent of their basic hourly rate of pay for each hour of service on a **tour of duty**, any part of which is between midnight Friday and midnight Sunday. **Overtime** work is eligible for weekend pay as long as it is performed on an established tour of duty.

e. If the facility Director authorizes premium pay on the same basis as registered nurses, how will the premium pay entitlements of affected employees change?

Answer. (1) Weekend Pay: As noted above, the law requires title 38 weekend pay for all hybrids, so weekend pay would remain the same. Other components would change as follows:

Answer. (2) Overtime: Under title 5, employees are paid overtime at one and one-half times their hourly rate of basic pay, not to exceed the greater of one and one-half times the basic rate of GS-10 step 1 or their regular hourly rate of pay. Under title 38, employees would also be paid overtime at one and one-half times their hourly rate of basic pay but the rate would not be capped.

Answer. (3) Holiday: Under title 5, employees are paid holiday pay at double their hourly rate of basic pay for **non-overtime** hours worked on a **regularly scheduled daily tour of duty** on a holiday. Under title 38, employees would be paid holiday pay at the same rate but for all hours worked on a holiday **including overtime hours or hours not on an established tour of duty**.

Answer. (4) Night Pay Differential: Under title 5, employees receive night pay differential at the rate of 10 percent of their hourly rate of basic pay **for each hour** of regularly scheduled work performed between 6 p.m. and 6 a.m. Under title 38, employees would receive tour differential at the same rate for work on an established tour of duty, but if at least 4 hours of the tour fall between the hours 6 p.m. and 6 a.m., tour differential is paid **for the entire tour**.

f Some occupations being converted to hybrid status are on special salary rates. Will the new hybrid occupations continue to be eligible for special salary rate adjustments?

Answer. Yes. Special salary rates may continue to be approved for the new hybrid occupations. However, the approval process is significantly streamlined. Under title 5, requests to establish or increase special salary rates required the approval of VA Central Office and the concurrence of the Office of Personnel Management. Under title 38, facility Directors may locally establish or adjust special salary rates for hybrid occupations, subject to VA Central Office review. Procedures for establishing or adjusting special salary rates for hybrid occupations are contained in VA Handbook 5007, Part VI, Chapter 6, paragraph 2.

3. Employee Relations and Special Advancements:

a. How does Public Law 108-170 affect adverse action rights for hybrid employees appointed under 38 U.S.C. 7405 (a)(1)(B)?

Answer. Public Law 108-170 gives non-probationary part-time hybrid employees appointed under 38 U.S.C. 7405(a)(1)(B) the same adverse action rights as full-time hybrid employees appointed under 7401(3).

Hybrid employees are considered to be in the excepted service. Under title 5 excepted service rules, the length of service an employee must serve to become eligible to appeal an adverse action to the Merit Systems Protection Board (MSPB) depends on whether the employee is preference-eligible. Accordingly, Human Resources offices need to ascertain on an individual basis whether these employees are preference eligibles or other-than preference-eligibles, for the purpose of determining the length of service required before they become eligible for adverse action rights under 5 U.S.C., Chapter 75, and 5 CFR, Part 752.

Per 5 U.S.C. 7511, preference eligible employees in the excepted service who have completed 1 year of current continuous service in the same or similar positions have adverse action rights. Other-than-preference-eligible individuals who have completed 2 years of current continuous service in the same or similar positions (under other than a temporary appointment limited to two years or less) have adverse action rights. By contrast, VA policy provides that all hybrid employees, irrespective of preference eligibility, accrue adverse action rights after a one-year probationary period. As a result of this difference between VA policy and the title 5 MSPB jurisdictional rules, other-than- preference-eligible employees who have completed between one and two years of continuous service may not appeal adverse actions to MSPB but are covered under appropriate agency or negotiated adverse action (i.e., grievance) procedures.

Should one of these hybrid employees become the subject of a performance or

conduct-based adverse action, he or she must be notified of these rights, if applicable, in the decision letter.

b. Are employees in the affected occupations eligible for Special Advancements?

Answer. (1) Special Advancements for Achievement (SAA). VA will be collaborating with employee organizations regarding advancement and promotion procedures for the new hybrid occupations. Until the collaboration process has been completed, facilities should apply existing title 5 advancement and promotion procedures. This means that no SAAs will be granted to employees in the new hybrid occupations in the interim, since there are no provisions under title 5 to grant these increases to pay.

Answer. (2) Special Advancements for Performance (SAP). Prior to the collaboration process being completed, facilities should apply existing title 5 procedures to these new hybrid positions. This means no SAPs will be granted to individuals in these occupations until the conversion occurs. Until then, however, a one-step increase to pay may be granted to an employee when his or her overall performance is deemed exceptional as demonstrated by making significant contributions to the accomplishment of organizational goals and objectives, and exceeds the standards on all elements in his or her performance plan. This increase would be equivalent to a Quality Step Increase. Recommendations for this increase should be made as soon as possible after the end of the rating period.

4. Classification:

a. Which occupations/series are to be covered under title 5 classification procedures during the interim implementation period?

Answer. Employees in the following occupations will be converted from the competitive civil service to the hybrid title 38 employment system effective December 6, 2003:

<u>Title</u>	<u>Series</u>
(1) Audiologist	0665
(2) Speech Pathologist;	0665
(3) Audiologist-Speech Pathologist	0665
(4) Biomedical Engineer	0858
(5) Dietitian	0630
(6) Medical Instrument Technician	0649
(7) Medical Records Administrator or Specialist	0669
(8) Medical Records Technician	0675
(9) Medical Technologist	0644
(10) Dental Technologist, which means Dental Hygienist and	0682

HUMAN RESOURCES MANAGEMENT LETTER NO. 05-04-02

Attachment E

Dental Assistant/Aide;	0681
(11) Nuclear Medicine Technologist	0601
(12) Occupational Therapy Assistant/Aide	0636
(13) Kinesiotherapist*	0635
(14) Orthotist-Prosthetist	0667
(15) Pharmacy Technician/Aide	0661
(16) Physical Therapy Assistant/Aide	0636
(17) Prosthetic Representative	0672
(18) Psychologist**	0180
(19) Diagnostic Radiologic Technician/Technologist	0647
(20) Therapeutic Radiologic Technician/Technologist	0648
(21) Social Worker	0185

* Note: "Kinesiotherapist" is currently titled Corrective Therapist, GS-0635.

** VHA only

b. Why are positions under the new hybrid law still being classified under title 5?

Answer. Until formal title 38 policies and procedures relating to the new hybrid occupations are approved, including advancement/promotion procedures, permanent employees in the above occupations will have their grades determined under title 5 guidelines. Except as noted below, during this transition period all title 5 classification guidelines will be followed to include maintenance of position descriptions, use of OPM classification standards and applicable VA Human Resource Management Letters (HRMLs), VA Directive and Handbook 5003, and use of Optional Form (OF) 8 to document such items as position number, Fair Labor Standards Act coverage, competitive level codes, and position sensitivity.

c. Are there any aspects of title 5 classification that will not cover the new hybrids?

Answer. Procedures covering classification appeals within VA will still be retained during the interim implementation period. However, the Office of Personnel Management (OPM) may not have jurisdiction over cases outside of title 5 and may, therefore, turn back cases being sent to it from employees in these hybrid occupations. In the meantime, classification appeals procedures will continue during the transition period and VACO (051A) will be the final appellate authority during the transition in cases involving employees in the new hybrid occupations. Classification appeals cases from employees converted to hybrid status by P.L. 108-170 should be sent to 051A.

d. Do I need to develop functional statements?

Answer. No. Because the grade of a position will be determined using a title 5 classified position description, you need to use existing classified position descriptions or develop new position descriptions and have them properly classified.

You may want to begin developing functional statements for use when permanent policies are implemented.

e. Who on the VACO staff should I contact with classification questions?

Answer. The following individuals may be contacted for questions in noted areas: Jim Halliday on 202-273-4973 for questions regarding occupational coverage and titles; Ruby Washington on 202-273-6719 for questions regarding classification appeals from covered employees during the transition; and William Ellison on 202-273-9841 for all other questions.